

THE SUPREME COURT OF OHIO

JESSE L. GOODEN)

Appellant)

vs.)

MARGARET BRADSHAW, Warden)

Appellee)

Case No. 11-1943On Appeal From the Fifth
District Court of Appeals

Case No. 11CA55

NOTICE OF APPEAL**For the Appellant:**

Jesse L. Gooden 571-717
Richland Correctional Institution
1001 Olivesburg Rd.
P.O. Box 8107
Mansfield, Ohio 44901-8107

For the Appellee:

Mr. Gene Park
Assistant Attorney General
150 E. Gay Street, 16th Floor
Columbus, Ohio 43215

RECEIVED

NOV 16 2011

CLERK OF COURT
SUPREME COURT OF OHIO

FILED

NOV 16 2011

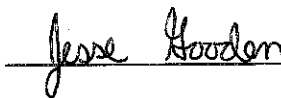
CLERK OF COURT
SUPREME COURT OF OHIO

Notice of Appeal of Appellant Jesse L. Gooden

Appellant Jesse L. Gooden hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Richland County Court of Appeals, Fifth Appellate District, entered in Court of Appeals case No. 11CA55 on October 12, 2011.

This case originated in the court of appeals with an original action for habeas corpus relief.

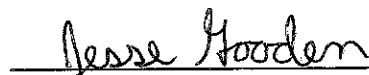
Respectfully submitted,



Jesse L. Gooden 571-717
RiCI
1001 Olivesburg Rd.
P.O. Box 8107
Mansfield, Ohio 44901-8107

CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Appeal was sent by ordinary U.S. Mail to counsel for Appellee, Mr. Gene Park at 150 East Gay Street, 16th Floor, Columbus, Ohio 43215 on this 1st day of November, 2011.



Jesse L. Gooden

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

COURT OF APPEALS
RICHLAND COUNTY OHIO
FILED

2011 OCT 12 AM 11:10

LINDA H. FRARY
CLERK

JESSE L. GOODEN

Petitioner

-VS-

MARGARET BRADSHAW, Warden

Respondent

JUDGES:

William B. Hoffman, P.J.

John W. Wise, J.

Julie A. Edwards, J.

Case No. 11CA55

OPINION

CHARACTER OF PROCEEDING:

Writ of Habeas Corpus

JUDGMENT:

Denied

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Petitioner

For Respondent

CC: JESSE L. GOODEN
Richland Correctional Institute
1001 Olivesburg Rd.
P.O. Box 8107
Mansfield, Ohio 44901-8107

GENE D. PARK
Criminal Justice Section
150 East Gay Street, 16th Floor
Columbus, Ohio 43215

Atty General

SCANNED

Hoffman, P.J.

{¶1} Petitioner, Jesse Gooden, filed a Petition for Writ of Habeas Corpus requesting immediate release from prison based upon an alleged void sentence. Petitioner claims the sentence is void because the trial court sentenced Petitioner on Count One despite the fact Count One was dismissed prior to trial.

{¶2} Petitioner was indicted on four counts. Count One of the indictment was a charge of Felonious Assault which the State moved to dismiss prior to trial. A jury trial was held on the three remaining counts: Count Two was a charge of Failure to Comply with an Order of a Police Officer, Count Three was a charge of Vandalism, and Count Four was a charge of Felonious Assault. The jury found the Petitioner guilty of all three counts. The trial court essentially renumbered the jury verdict forms in a way which did not correspond to the same numbers listed on the indictment. It is undisputed Petitioner was convicted on three counts and sentenced on three counts. Petitioner argues his sentence was void because the count numbers assigned in the sentencing entry do not exactly correspond to the numbers contained in the indictment.

{¶3} The Ninth District Court of Appeals approved the use of verdict forms which were labeled with numbers that did not correspond with the numbering on the indictment, "To avoid confusion, the crimes pertaining to Defendant in the jury verdict forms were simply labeled beginning on "Count One" rather than on "Count Three." It is clear that Defendant was convicted for the crimes with which he was charged in the indictment. The different numbering of the counts in the indictment and verdict forms was neither error nor prejudicial to Defendant. See *Crim.R. 52(A)*." *State v. Washington* 1997 WL 775666, 7 (Ohio App. 9 Dist.).

{¶4} We find Petitioner has or had an adequate remedy at law by way of direct appeal to challenge any defect in his sentence. "Like other extraordinary-writ actions, habeas corpus is not available when there is an adequate remedy in the ordinary course of law." *In re Complaint for Writ of Habeas Corpus for Goeller*, 103 Ohio St.3d 427, 2004-Ohio-5579, 816 N.E.2d 594, ¶ 6.

{¶5} Finally, as the Supreme Court has held, "[H]abeas corpus is generally available only when the petitioner's maximum sentence has expired and he is being held unlawfully. *Morgan v. Ohio Adult Parole Auth.* (1994), 68 Ohio St.3d 344, 346, 626 N.E.2d 939, 941." *Heddleston v. Mack* 84 Ohio St.3d 213, 213-214, 702 N.E.2d 1198, 1198 (Ohio,1998); *Hughley v. Duffey*, 2009 WL 3790667, 1 (Ohio App. 5 Dist.).

{¶6} Here Petitioner was sentenced on July 24, 2009 to a term of nine years in prison which has not expired. Because Petitioner remains incarcerated pursuant to a valid, unexpired sentence, habeas corpus does not lie.

{17} PETITION DENIED.

By: Hoffman, P.J.

Wise, J. and

Edwards, J. concur

William B. Hoffman
John D. Wise
John G. Edwards

JUDGES

WBH/as0906

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO

FIFTH APPELLATE DISTRICT

COURT OF APPEALS
RICHLAND COUNTY OHIO
FILED

2011 OCT 12 AM 11:11

LINDA H. FRARY
CLERK

JESSE L. GOODEN

Petitioner

-VS-

MARGARET BRADSHAW, Warden

Respondent

JUDGMENT ENTRY

CASE NO. 11CA55

For the reasons stated in our accompanying Opinion on file, Petitioner's Petition for a Writ of Habeas Corpus is denied. Costs assessed to Petitioner.

William B. Hoffman

John R. Smith

John A. Edwards

JUDGES